





IN THE  
**Supreme Court of the United States.**

OCTOBER TERM, 1905.

IN EQUITY.

*No. 11 Original.*

THE STATE OF LOUISIANA, *Complainant.*

v.

THE STATE OF MISSISSIPPI, *Defendant.*

**Supplement to Petition for Rehearing.**

We pray the Court to accept the following as a supplement to the Petition for Rehearing heretofore filed. In that petition we have cited the cases in which this Court has held, almost from its organization, that it is the exclusive province of the political department to define the national boundaries of the United States, and that the judiciary must accept the determination of the political department in that regard. As the right to determine what are and what are not territorial waters is an integral and necessary part of the right to define natural boundaries, the political department has from the beginning exercised the right to declare what are the territorial waters of the United States. We therefore respectfully

submit that this Court has no jurisdiction to determine, as an original question, whether or no Mississippi Sound is territorial water. The only real inquiry is this: Has it that character under the rules and definitions of the political department? We therefore beg leave to lay before the Court as a part of our petition the views on that subject of two distinguished jurists better qualified perhaps by experience than any other persons to declare what is the rule on this subject as recognized by the political department. We refer to the Hon. William L. Penfield, for so many years the trusted legal adviser of our Department of State, and General George B. Davis, the eminent writer upon international law, now a delegate to the Hague Conference, and the chief law adviser of the War Department, in which he holds the office of Judge-Advocate General. The following explains itself:

“WASHINGTON, D. C., *March 31, 1906.*

“Gen. GEORGE B. DAVIS,

“*Judge-Advocate General,*

“*Washington, D. C.*

“DEAR GENERAL: In the case of Louisiana against Mississippi, now pending in the Supreme Court of the United States, the defendant contends that the long indentation in the coast of the Gulf of Mexico known as Mississippi Sound is the open sea and not that kind of territorial water technically known in international law as ‘an arm of the sea.’ Familiar as you are with the rules by which the political department of the Government

determines the character of such territorial water, will you be good enough to say whether, under those rules as you understand them, Mississippi Sound is the open sea or that kind of territorial water generally known as an arm of the sea. Under the rule of the political department as you understand it, can the fact that certain islands, such as Cat Island, Ship Island and Horn Island are situated in the sea in front of the indentation known as Mississippi Sound, convert it into 'an enclosed arm of the sea.' Under the rule of the political department, where does the three mile zone run along the shore of what is known as Mississippi Sound?

"With great respect,

"Yours very truly,

"HANNIS TAYLOR,

*"Of Counsel for Mississippi."*

"WAR DEPARTMENT,

"OFFICE OF THE JUDGE-ADVOCATE GENERAL,

"WASHINGTON, *March 31, 1906.*

"MY DEAR SIR: I beg to acknowledge the receipt of your favor of the 31st instant, in which you say that in the case of *Louisiana vs. Mississippi*, which is now in the Supreme Court of the United States, the defendant contends that the long indentation of the coast of the Gulf of Mexico, known as Mississippi Sound, is an open sea, and is not that kind of territorial water which is technically known in international law as 'an arm of the sea.'

"An expression of opinion is desired as to whether,

under the rules of international law as I understand them, Mississippi Sound is a part of the open sea, or that kind of territorial water which is generally known as an arm of the sea. In other words, can the fact that certain islands, such as Cat Island, Ship Island, and Horn Island, which are situated in the Gulf in front of the indentation known as Mississippi Sound, convert it into an enclosed arm of the sea?

"Mississippi Sound is a body of water lying between Mobile Bay to the east, and Lakes Borgne and Ponchartrain to the west. Mobile Bay and Lakes Borgne and Ponchartrain seem to be bodies of water falling clearly within the definition of arms of the sea, but I am not aware of any rule of international law under which the strip of water running east and west that lies between them can be regarded as, in any sense, an enclosed arm of the sea. It is not an enclosed, or nearly enclosed body of water like the Chesapeake, Delaware and Mobile Bays, or Lakes Borgne and Ponchartrain, but is clearly a portion of the large body of water known as the Gulf of Mexico, which constitutes a portion of the high seas.

"As the islands which you mention *lie considerably beyond a marine league in distance from the coast*, they could not, in my opinion, operate to so include the water lying between them and the mainland within the designation of an arm of the sea as that term is understood in international law.

"Under the rule established by the political departments of the Government, it is my opinion that the strip

of marginal sea extends along the shore of Mississippi Sound for a distance of three miles from the mainland; and I remain,

"Very respectfully,

"GEO. B. DAVIS,

"*Judge-Advocate General.*

"HON. HANNIS TAYLOR,

"*Washington, D. C.*"

"I concur in the view of Gen. Davis on the facts stated.

"W. L. PENFIELD."

In the light of the foregoing we desire to call the attention of the court, with special emphasis, to the distances between the mainland coast of Mississippi and the four large islands—Cat Island, Ship Island, Horn Island and Petit Bois Island, the only islands lying in front of the indentation of the coast known as Mississippi Sound. The first is distant about nine miles, the second about twelve, the third and fourth, about nine. It thus appears that each is far beyond the three-mile zone which is appendant, as the jurists quoted above insist, *to the mainland coast*. We confidently insist that no island can be said to be adjacent or appendant to the coast when it is miles beyond the limits of the three-mile zone which fringes such coast. In the case of the *Anna*, 5 Robinson, Admiralty 373, there is nothing to indicate that the mud islands at the mouth of the Mississippi were outside of the three-mile limit. On the contrary the language of Lord Stowell clearly indicates that they *were within it*. He speaks of "little mud islands composed of earth and trees drifted down the river, *which form a kind of portico to the mainland*. \* \* \* They are the natural *appendages of*

*the coast* on which they border, and from which, indeed, they are formed. Their elements are derived immediately from the territory and on the principle of alluvium and increment." In referring to this case Hall, p. 626, speaks of the "capture which took place *within the mouths of the Mississippi*." It is impossible to establish a parallel between these little mud islands, which were a part of the shore and formed out of it, and such large and distinct islands as Cat, Ship, Horn and Petit Bois, which stand out in the sea from nine to twelve miles from the shore. How can the court regard these islands, so far beyond the three mile zone, as "appendages of the coast."

It thus appears that these eminent and experienced jurists, practically familiar with the rules of the political department in this regard, concur with each other, and with the counsel for Louisiana in the conclusion "that Mississippi Sound and Lake Borgne are salt water bodies of water and true parts of the sea or gulf." In view of that fact and the further fact that this Court *has so far heard no argument whatever as to the contention that the rule on this subject as defined by the political department is binding upon the Court*, we pray that your honors will give us a hearing upon this, the most vital point in the case. We respectfully repeat the certificate of counsel annexed to the original petition.

WILLIAM WILLIAMS,  
*Attorney-General of Mississippi.*

HANNIS TAYLOR,  
MONROE McCLURG,  
*Of Counsel.*